

Chuck - Go! Go! Go! Sounds great - please continue carrying the ball - Buy out of Tactics if necessary - this is right on

MEMORANDUM:

14 March 1974

From: Colonel Charles J. Keever, USMC
To: President, Naval War College

Via: Dean of Academics - *W concern Chuck's approach*

Subj: Paper for discussion at the workshop on the law of war

1. Pursuant to instructions, the undersigned has conferred with various faculty members and with various outside scholars with a view to outlining the program for teaching international law at the Naval War College during the 1974-1975 academic year. The attached memorandum dated 3 March 1974 has resulted.

2. Professor Mallison has approved the memorandum with enthusiasm, although he had three minor suggestions: in the tactics subcourse, the principles of international law touching upon naval operations broadly conceived should be substituted for the operations of vessels; he would send out a Department of the Army publication instead of Fenwick or Brierly prior to the start of the school year; he would have an elective on the law of the sea vice the Law of the Sea Conference.

3. The Department Chairmen are willing to implement the program as outlined in the enclosure.

4. There are faculty members who still are firmly convinced that the proposed program will be more "cosmetic" than effective. I have undertaken to state their position (which is the position of many outside scholars) in paragraph 6 of the enclosure. I think it is correct to state that these dissenters think that the proposed program is the most effective possible under the current academic philosophy at the War College.

5. I personally am convinced that an aggressive effort should be made to implement the proposal with the following caveats:

a. A great deal of time and effort will have to be put into preparing the initial letter on international law. It will have to be concise so that the student will read it - but it will have to be comprehensive so that the underlying structure of the relevant principles of international law can be laid out in meaningful terms. And it will have to outline carefully the manner in which the student will come into contact with these principles throughout the year.

b. The problems to be studied in each of the subcourses should be ascertained as quickly as possible in order that very careful consideration can be given to structuring the three major addresses on international law and so that appropriate problems can be selected for essay treatment. These should be examined as an entity so that a comprehensive tied-together program in international law can be developed.

NAVY review(s) completed.

c. Efforts to prepare the memorandums for students should commence without delay. Once the problems to be studied have been selected, it is imperative that the international legal staff commence immediately to tie in the international law education program. If an attempt is made to do this at the last minute, it will fail in its over-all integration concept - and the students will quickly recognize it as a last minute add-on.

d. It is suggested that a tentative outline of proposed studies be made by the local staff and then reviewed by the leaders of the international legal community, both within the Government (the JAGs, the JAG Schools, Defense and State departments) and within the civilian scholarly community. I know from personal conversations that almost all of the leading civilian scholars have an intense desire to assist in improving educational efforts at the various war colleges and would provide much free - and extremely valuable - assistance in developing a program.

6. I suggest that there are several reasons for undertaking the proposed program - aside, of course, from underlying instructions from the President:

a. International law is such an amorphous subject that it is practically impossible for a student to comprehend its significance within a week or other limited "core of instruction". By spreading the instruction out over the course of the entire year, the student will be exposed to the fact that this subject pervades much of what he will be doing for the rest of his professional career - and will have a longer period of time to ponder the vagaries of the principles.

b. One of the principal criticisms which I have experienced among the experts on the law of war is that the subject should not be taught in watertight compartments - it should be integrated with other relevant subjects and should be incorporated into field exercises and other daily activities. The proposed program will be a step in this direction.

c. The key to success in this program will be the diligence and application of the faculty members responsible for developing and presenting the program. If it should prove successful, it would very easily serve as a model for other military schools to adopt. It may be discovered that a limited "core of instruction" would be of assistance at the beginning of the school year - but certainly the concept of looking at international law all year long would appear to be superior to having only one week when the subject is considered.

7. With reference to the workshop on the law of war, it now appears that all of the war colleges, command and staff colleges and service academies will have representatives in attendance except the Army War College - but none of the Commandants/Superintendents will be present. The only flag/general officers who will be in attendance, it appears, will be the three JAGs and Major General Gard. We shall have about 10 other military representatives in attendance, mostly judge advocates or officers

charged with teaching international law/law of war. We shall have approximately 15 civilian scholars - all of the most noted except Professor Dick Falk. And we shall have principal lawyers from the State and Defense departments.

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8. Professor Mallison has suggested that if the President of the Naval War College is unable to attend, he would be delighted to present the paper on teaching international law on his behalf. This would give the Naval War College an advocate who is highly skilled in the teaching of international law - who will be charged with implementing the program next year.

9. It would be appreciated if you would review the enclosure and give us guidance on the concepts of the proposed program and an indication as to whether you will be able to attend the work shop or will want Professor Mallison to represent you.

Very respectfully,

Charles J. Keever

Charles J. Keever
Colonel USMC

*Regret the
SABET meeting here
precludes my attending.*

1530

3 March 1974

MEMORANDUM ON INTERNATIONAL LAW AND THE NWC SYLLABUS1. Purpose.

To formulate a concept of teaching international law at the Naval War College during the academic year 1974-1975 for submission to Admiral Turner for his consideration.

2. Background.

The undersigned has been asked to work with the current and the prospective incumbents of the Stockton Chair of International Law in developing a program for teaching international law at NWC next year. On 25 February the undersigned submitted a memorandum to various faculty members on this subject; this memorandum results from the various comments on that original draft.

3. Objective.

To sharpen the judgment of the officers who must make decisions in the international arena by:

a. Improving his awareness of the general nature and structure of international law and of the interplay between international politics and international law (law as a form of ordering emerging out of a political process.)

b. Developing a precise perception of the ways in which and the extent to which international law operates in the international sphere with special emphasis upon its effect upon the formulation of national policy and strategy, and upon military strategy and operations; and of its relation to the problems of the development of ocean transportation and resources.

c. Demonstrating how to use international law in the making of policy decisions and in the execution of military operations.

4. Incorporation into principal curriculum.

Consideration of the role of international law will continue throughout the academic year, being keyed always to the specific case studies forming the nucleus of study in each subcourse. One-half day of instruction (i.e., a major address by the incumbent of the Stockton Chair) would be devoted to international law in each subcourse and seminar essays with appropriate reading assignments incorporating international law considerations would be included during at least two of the case studies for each subcourse.

During the Strategy subcourse, the emphasis would be upon the historical development of international law as it relates to the use of force, keyed particularly to the specific case studies constituting the curriculum for this course. The major address could perhaps come at the beginning of the week when the students are introduced to the

strategy of total war (the Napoleonic era). Essay questions could perhaps be included in the same week's work and in the week during which the Cuban Missile Crisis is addressed.

During the Management subcourse, the emphasis would be upon the ius ad bellum, or the principles of international law governing the propriety of using force and how to make use of that body of principles in making policy decisions. The major address could perhaps come prior to the time the students study the German decision to build a capital fleet and the essays could be assigned perhaps during the same case study and during the study again of the Cuban Missile Crisis.

During the Tactics subcourse, the emphasis would be upon the law of the sea and the ius in bello, or the principles of international law touching directly upon the operations of vessels during the application of force. The major address could perhaps come during the initial phase of the subcourse, and the essays could be assigned during the sea control study and projection study phases of the course.

5. Ancillary education.

a. Memorandums for students.

(1) It is suggested that the Stockton Chair professor could profitably prepare an introductory letter to each student orienting him on the significance of international law and explaining how the subject will be covered during the course of studies at NWC. This introductory letter could perhaps encourage the student to read a basic, generalized book on international law such as Brierly's The Law of Nations or Fenwick's (title to be obtained).

(2) During each week when it is appropriate, the Stockton Chair professor should prepare a brief, concise statement of international law considerations raised by the subject matter under study. These statements will obviously have to be extremely short - and stimulating - or the student will ignore them in the light of their other reading requirements. This device, however, will serve to keep the student officer constantly aware of the fact that international law is a living doctrine that is relevant to many of the matters upon which he will be working during the remainder of his career.

b. Elective courses for the students.

It is suggested that there should be two electives available: one on the Law of the Sea ~~Conference~~ and one on the laws of war.

6. Discussion.

a. It is readily apparent that the foregoing concept will require a great deal of work on the part of the faculty charged with responsibilities in the international law field. If the concept is approved, it is recommended that liaison be effected without delay with various scholars in the field to obtain assistance in preparing the best possible outline of points to be considered in each of the major addresses, suggestions for reading lists and seminar essays, and ideas for the

ancillary memorandums. Under the foregoing concept, the international law aspects of the NWC's educational programs should be subject to the approval of each Department Chairman to avoid disrupting the entity of instruction in each major field. This will, of course, require a great deal of liaison and early planning.

b. It should be noted that many of the experts whom the undersigned has consulted appear to be firmly convinced of two things, account of which has not been taken in the foregoing suggestions:

(1) That the typical student officer does not have an adequate knowledge of the basic concepts of international law to make a program such as that recommended practical. For this reason, many have suggested that a "core of instruction" lasting three or four days should be scheduled during which ancillary instructors (preferably qualified judge advocates) would come in to assist in presenting an intensive international law program covering the basic concepts and considerations.

(2) That there should be some rather comprehensive discussion of the Law of the Sea Conference during this particular period - and that the above "core of instruction" could, and should, be developed around this topic.

The approach which would incorporate the above two points has not been recommended only because it would be radically inconsistent with the prevailing concept of education at the Naval War College.

Respectfully submitted,

Charles J. Keever
Charles J. Keever
Colonel USMC

Copies to: Rear Admiral C. S. Williams, USN
Rear Admiral H. E. Eccles, USN (Ret.)
Professor F.H. Hartmann ✓
Colonel R.D. Slay, USMC
Professor A.V. Freeman
Professor W.T. Mallison ✓
Professor W.F. Rogers
Professor P.A. Crowl
Captain E.C. Kenyon, USN
Professor J.E. King ✓
Mr. F.E. Maestroni ✓

*I would favor a voluntary symposium round table on this
some time during the year*